

CENTER FOR DISABILITY ACCESS
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Antonio Fernandez,

Plaintiff,

v.

Adrina Chavez, in individual and
representative capacity as Trustee of
the Maria Bonita Living Trust dated
June 30, 1999;
Epifania Castro

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: Americans With Disabilities
Act; Unruh Civil Rights Act**

Plaintiff Antonio Fernandez complains of Adrina Chavez, in individual and representative capacity as Trustee of the Maria Bonita Living Trust dated June 30, 1999; Epifania Castro; and alleges as follows:

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He is paralyzed from the waist down and uses a wheelchair for mobility.

2. Defendant Adrina Chavez, in individual and representative capacity as Trustee of the Maria Bonita Living Trust dated June 30, 1999, owned the real property located at or about 152 S. Fresno St., Los Angeles, California, in July

1 2021.

2 3. Defendant Adrina Chavez, in individual and representative capacity as
3 Trustee of the Maria Bonita Living Trust dated June 30, 1999, owns the real
4 property located at or about 152 S. Fresno St., Los Angeles, California,
5 currently.

6 4. Defendant Epifania Castro owned Karen Mini Market located at or
7 about 152 S. Fresno St., Los Angeles, California, in July 2021.

8 5. Defendant Epifania Castro owns Karen Mini Market (“Market”) located
9 at or about 152 S. Fresno St., Los Angeles, California, currently.

10 6. Plaintiff does not know the true names of Defendants, their business
11 capacities, their ownership connection to the property and business, or their
12 relative responsibilities in causing the access violations herein complained of,
13 and alleges a joint venture and common enterprise by all such Defendants.
14 Plaintiff is informed and believes that each of the Defendants herein is
15 responsible in some capacity for the events herein alleged, or is a necessary
16 party for obtaining appropriate relief. Plaintiff will seek leave to amend when
17 the true names, capacities, connections, and responsibilities of the Defendants
18 are ascertained.

19
20 **JURISDICTION & VENUE:**

21 7. The Court has subject matter jurisdiction over the action pursuant to 28
22 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans with
23 Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

24 8. Pursuant to supplemental jurisdiction, an attendant and related cause
25 of action, arising from the same nucleus of operative facts and arising out of
26 the same transactions, is also brought under California’s Unruh Civil Rights
27 Act, which act expressly incorporates the Americans with Disabilities Act.

28 9. Venue is proper in this court pursuant to 28 U.S.C. § 1391(b) and is

1 founded on the fact that the real property which is the subject of this action is
2 located in this district and that Plaintiff's cause of action arose in this district.

3
4 **FACTUAL ALLEGATIONS:**

5 10. Plaintiff went to the Market in July 2021 with the intention to avail
6 himself of its goods or services motivated in part to determine if the
7 defendants comply with the disability access laws.

8 11. The Market is a facility open to the public, a place of public
9 accommodation, and a business establishment.

10 12. Unfortunately, on the date of the plaintiff's visit, the defendants failed
11 to provide wheelchair accessible paths of travel in conformance with the ADA
12 Standards as it relates to wheelchair users like the plaintiff.

13 13. The Market provides paths of travel to its customers but fails to provide
14 wheelchair accessible paths of travel in conformance with the ADA Standards.

15 14. A problem that plaintiff encountered was that the paths of travel inside
16 the Market narrowed to less than 36 inches in width in some places.

17 15. Plaintiff believes that there are other features of the paths of travel that
18 likely fail to comply with the ADA Standards and seeks to have fully compliant
19 paths of travel for wheelchair users.

20 16. On information and belief, the defendants currently fail to provide
21 wheelchair accessible paths of travel.

22 17. The failure to provide accessible facilities created difficulty and
23 discomfort for the Plaintiff.

24 18. These barriers relate to and impact the plaintiff's disability. Plaintiff
25 personally encountered these barriers.

26 19. As a wheelchair user, the plaintiff benefits from and is entitled to use
27 wheelchair accessible facilities. By failing to provide accessible facilities, the
28 defendants denied the plaintiff full and equal access.

1 20. Even though the plaintiff did not confront the barrier, the sales counter
2 is too high. There is no counter that is 36 inches or less in height that
3 wheelchair user could use for his transactions. Plaintiff seeks to have this
4 barrier removed as it relates to and impacts his disability.

5 21. The defendants have failed to maintain in working and useable
6 conditions those features required to provide ready access to persons with
7 disabilities.

8 22. The barriers identified above are easily removed without much
9 difficulty or expense. They are the types of barriers identified by the
10 Department of Justice as presumably readily achievable to remove and, in fact,
11 these barriers are readily achievable to remove. Moreover, there are numerous
12 alternative accommodations that could be made to provide a greater level of
13 access if complete removal were not achievable.

14 23. Plaintiff will return to the Market to avail himself of its goods or services
15 and to determine compliance with the disability access laws once it is
16 represented to him that the Market and its facilities are accessible. Plaintiff is
17 currently deterred from doing so because of his knowledge of the existing
18 barriers and his uncertainty about the existence of yet other barriers on the
19 site. If the barriers are not removed, the plaintiff will face unlawful and
20 discriminatory barriers again.

21 24. Given the obvious and blatant nature of the barriers and violations
22 alleged herein, the plaintiff alleges, on information and belief, that there are
23 other violations and barriers on the site that relate to his disability. Plaintiff will
24 amend the complaint, to provide proper notice regarding the scope of this
25 lawsuit, once he conducts a site inspection. However, please be on notice that
26 the plaintiff seeks to have all barriers related to his disability remedied. See
27 *Doran v. 7-11*, 524 F.3d 1034 (9th Cir. 2008) (holding that once a plaintiff
28 encounters one barrier at a site, he can sue to have all barriers that relate to his

1 disability removed regardless of whether he personally encountered them).

2
3 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS**
4 **WITH DISABILITIES ACT OF 1990** (On behalf of Plaintiff and against all
5 Defendants.) (42 U.S.C. section 12101, et seq.)

6 25. Plaintiff re-pleads and incorporates by reference, as if fully set forth
7 again herein, the allegations contained in all prior paragraphs of this
8 complaint.

9 26. Under the ADA, it is an act of discrimination to fail to ensure that the
10 privileges, advantages, accommodations, facilities, goods and services of any
11 place of public accommodation is offered on a full and equal basis by anyone
12 who owns, leases, or operates a place of public accommodation. See 42 U.S.C.
13 § 12182(a). Discrimination is defined, inter alia, as follows:

- 14 a. A failure to make reasonable modifications in policies, practices,
15 or procedures, when such modifications are necessary to afford
16 goods, services, facilities, privileges, advantages, or
17 accommodations to individuals with disabilities, unless the
18 accommodation would work a fundamental alteration of those
19 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 20 b. A failure to remove architectural barriers where such removal is
21 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
22 defined by reference to the ADA Standards.
- 23 c. A failure to make alterations in such a manner that, to the
24 maximum extent feasible, the altered portions of the facility are
25 readily accessible to and usable by individuals with disabilities,
26 including individuals who use wheelchairs or to ensure that, to the
27 maximum extent feasible, the path of travel to the altered area and
28 the bathrooms, telephones, and drinking fountains serving the

1 altered area, are readily accessible to and usable by individuals
2 with disabilities. 42 U.S.C. § 12183(a)(2).

3 27. When a business provides paths of travel, it must provide accessible
4 paths of travel.

5 28. Here, accessible paths of travel have not been provided in conformance
6 with the ADA Standards.

7 29. When a business provides sales counters, it must provide accessible
8 sales counters.

9 30. Here, accessible sales counters have not been provided in conformance
10 with the ADA Standards.

11 31. The Safe Harbor provisions of the 2010 Standards are not applicable
12 here because the conditions challenged in this lawsuit do not comply with the
13 1991 Standards.

14 32. A public accommodation must maintain in operable working condition
15 those features of its facilities and equipment that are required to be readily
16 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

17 33. Here, the failure to ensure that the accessible facilities were available
18 and ready to be used by the plaintiff is a violation of the law.

19
20 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL**
21 **RIGHTS ACT** (On behalf of Plaintiff and against all Defendants.) (Cal. Civ.
22 Code § 51-53.)

23 34. Plaintiff repleads and incorporates by reference, as if fully set forth
24 again herein, the allegations contained in all prior paragraphs of this
25 complaint. The Unruh Civil Rights Act (“Unruh Act”) guarantees, inter alia,
26 that persons with disabilities are entitled to full and equal accommodations,
27 advantages, facilities, privileges, or services in all business establishment of
28 every kind whatsoever within the jurisdiction of the State of California. Cal.

1 Civ. Code §51(b).

2 35. The Unruh Act provides that a violation of the ADA is a violation of the
3 Unruh Act. Cal. Civ. Code, § 51(f).

4 36. Defendants' acts and omissions, as herein alleged, have violated the
5 Unruh Act by, inter alia, denying, or aiding, or inciting the denial of, Plaintiff's
6 rights to full and equal use of the accommodations, advantages, facilities,
7 privileges, or services offered.

8 37. Because the violation of the Unruh Civil Rights Act resulted in difficulty,
9 discomfort or embarrassment for the plaintiff, the defendants are also each
10 responsible for statutory damages, i.e., a civil penalty. (Civ. Code § 55.56(a)-
11 (c).)

12
13 **PRAYER:**

14 Wherefore, Plaintiff prays that this Court award damages and provide
15 relief as follows:

16 1. For injunctive relief, compelling Defendants to comply with the
17 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
18 plaintiff is not invoking section 55 of the California Civil Code and is not
19 seeking injunctive relief under the Disabled Persons Act at all.


20 2. For equitable nominal damages for violation of the ADA. See
21 *Uzuegbunam v. Preczewski*, --- U.S. ---, 2021 WL 850106 (U.S. Mar. 8, 2021)
22 and any other equitable relief the Court sees fit to grant.

23 3. Damages under the Unruh Civil Rights Act, which provides for actual
24 damages and a statutory minimum of \$4,000 for each offense.

25 4. Reasonable attorney fees, litigation expenses and costs of suit, pursuant
26 to 42 U.S.C. § 12205; and Cal. Civ. Code §§ 52.

1 Dated: March 31, 2022

CENTER FOR DISABILITY ACCESS

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3 By: 

4 Amanda Seabock, Esq.
5 Attorney for plaintiff
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